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ETHA DORA JOHNSON

JANUARY 18, 1956.—Committed to the Committee of the Whole House and ordered to be printed

Mr. ENGLE, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany H. R. 6618]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H. R. 6618) for the relief of Etha Dora Johnson, having considered the same, report favorably thereon with an amendment and recommend that the bill do pass.

The amendment is as follows:

Page 1, line 4, strike the words "without consideration," and insert in lieu thereof the words "upon the payment of not less than $1.25 per acre,".

PURPOSE OF THE BILL

The purpose of H. R. 6618 is to authorize and direct the Secretary of the Interior to issue a patent in fee, including all mineral rights, to a tract of 80 acres of homesteaded land in Smith County, Miss., to Etha Dora Johnson, claimant to the land, upon payment of not less than $1.25 per acre, such patent to be issued subject to any lease by the United States of the mineral deposits in such land and all rights of the United States under such lease to be transferred to the patentee.

In view of the general authorization given to the Secretary of the Interior by the Color of Title Act, the act of December 22, 1928 (45 Stat. 1069), as amended by the act of July 25, 1953 (67 Stat. 227; 43 U. S. C., secs. 1068–1068b), and in consideration of errors assertedly made by the General Land Office in the years 1847 and 1905 in regard to the tract of land in question and of other circumstances, as explained below, the committee recommends that H. R. 6618 be enacted.

EXPLANATION

The 80-acre tract of homestead land described in H. R. 6618 was first entered and sold in conjunction with adjoining lots in 1847 and the General Land Office considered the title to have passed to the patentee of the adjoining lots. In 1905, or 58 years later, the General Land Office determined that the tract of land had been improperly described and, therefore, that title had not passed and the tract was to be considered as public land. However, the Department reports that there is no record to show that the patentee of the adjoining lots, who assumed that he had bought and obtained patent to the tract of land referred to, was ever apprised of that fact.

The author of H. R. 6618, the Honorable William Arthur Winstead, points out and the Department's records confirm that the tract of land described in H. R. 6618 has been held in peaceful, adverse possession by the claimant, her ancestors, or grantors under claim or color of title for over 100 years in the apparent belief that they owned the land and minerals therein. Improvements and cultivation thereon are valued by the Department at $3,200. The records also show that taxes have been paid on the land at least since 1915. Receipt for taxes paid prior to that time cannot be shown due to the fact that the courthouse of Smith County, Miss., and all of its records were destroyed by fire in 1915.

The committee notes that the claimant to the tract of land described in the bill, who apparently became aware of the legal status of the land by the action of the Department of the Interior in issuing an oil and gas lease covering said land, appears to have satisfied all prerequisites of the Color of Title Act, as amended.

The Department of the Interior reports that since the claimant probably would have received an unrestricted patent in fee if the United States had not issued an oil and gas lease (April 1, 1955) prior to the time the claimant filed her color of title application (May 13, 1955), and since there appears to be no other impediment to the granting of the application to purchase the land, the Department has no objection to the enactment of H. R. 6618. The Department also reports that the Bureau of the Budget has no objection.

In view of the foregoing, the committee concludes that H. R. 6618 should be enacted.

No expenditure of Federal funds is involved in this legislation.

COMMITTEE AMENDMENT

The committee amendment providing that conveyance of the land be made upon the payment of not less than $1.25 per acre is consistent with the provisions of the Color of Title Act and the inference of the Department of the Interior, based on an examination of incomplete records, that payment for the land was not made when the homestead entry was made in 1847.

DEPARTMENTAL REPORT

The favorable report of the Department of the Interior is set forth following:

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington 25, D. C., July 25, 1955.

Hon. CLAIR ENGLE,
Committee on Interior and Insular Affairs,
House of Representatives, Washington 25, D. C.

MY DEAR MR. ENGLE: This is in reply to your request for the views of this Department on H. R. 6618, a bill for the relief of Etha Dora Johnson.

We would have no objection to the enactment of H. R. 6618.

Section 1 of this bill directs the Secretary of the Interior to issue, without consideration, a patent in fee, including mineral rights, to Etha Dora Johnson, of Taylorsville, Miss., to lots 5 (SW¼NW¼) and 6 (SE¼NW¼), sec. 8, T. 10 N., R. 14 W., Smith County, Miss. Section 2 provides that, if any mineral deposits in the land in question have been leased by the United States, the patent to be issued to Mrs. Johnson shall be subject to the provisions of the lease, and Mrs. Johnson shall receive the rights of the United States under the lease.

On May 13, 1955, Mrs. Johnson filed a color of title application (BLM 040108) pursuant to the act of December 22, 1928 (45 Stat. 1069), as amended by the act of July 25, 1953 (67 Stat. 227; 43 U. S. C., secs 1068–1068b). That statute authorizes the Secretary of the Interior to issue a patent for not more than 160 acres of public lands to a person holding those lands under claim or color of title upon the payment of not less than $1.25 per acre, and this application is now pending before this Department. Before it was amended by the 1953 act, the 1928 act required that any patent issued pursuant thereto should contain a reservation to the United States of all the minerals. Since the statute was amended by the 1953 act, the issuance of a patent without a mineral reservation has been permitted, if it is established that the requirements of the act have been complied with by the claimant and his predecessors for the period extending from a date not later than January 1, 1901, to the date of application, unless the lands are, at the time of the issuance of patent, within a mineral withdrawal, or subject to an outstanding mineral lease (43 U. S. C., sec. 1068b).

Mrs. Johnson alleged in her color of title application that her claim to the lands originated not later than January 1, 1901. Therefore, provided that she complied fully with the requirements of the 1953 act, a patent without a mineral reservation would have been issued to her if an oil and gas lease covering these lands had not been issued by this Department as of April 1, 1955, for an initial term of 5 years. The lease offer was filed in August 1954, approximately 9 months before Mrs. Johnson filed her color of title application. Since these lands are subject to the outstanding lease, an unrestricted patent cannot, under section 2 of the 1953 act, be issued to Mrs. Johnson, even if her application to purchase the lands is granted.

Since Mrs. Johnson would probably have received an unrestricted patent in fee if the United States had not issued an oil and gas lease prior to the time when she filed her application and since we understand that no impediment is at present apparent to the granting of Mrs. Johnson's application for the land, we would have no objection to the enactment of H. R. 6618.

The Bureau of the Budget has advised that there is no objection to the submission of this report to your committee.

Sincerely yours,

ORME LEWIS,
Assistant Secretary of the Interior.

The Committee on Interior and Insular Affairs recommends favorable enactment of H. R. 6618, as amended.